

ESTTA Tracking number: **ESTTA490593**

Filing date: **08/23/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054201
Party	Plaintiff Dan Foam ApS
Correspondence Address	AMY SULLIVAN CAHILL STITES HARBISON PLLC 400 WEST MARKET STREET , SUITE 1800 LOUISVILLE, KY 40202 3352 UNITED STATES acahill@stites.com
Submission	Motion for Summary Judgment
Filer's Name	Amy Sullivan Cahill
Filer's e-mail	acahill@stites.com
Signature	/Amy Sullivan Cahill/
Date	08/23/2012
Attachments	Petitioner's Summary Judgment Motion - Part 1.pdf (50 pages)(1082750 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DAN FOAM APS)	
)	
Petitioner,)	
)	Cancellation No. 92054201
v.)	
)	
SLEEP INNOVATIONS, INC.,)	
)	
Registrant.)	

****MOTION CONTAINS NON-CONFIDENTIAL MATERIALS ONLY**
CONFIDENTIAL MATERIALS FILED SEPARATELY UNDER SEAL**

PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner Dan Foam APS, by counsel, submits this motion for summary judgment pursuant to TBMP § 528 and Fed. R. Civ. P. 56. Discovery has been completed and no material factual issues remain in dispute. Accordingly, this proceeding is appropriately decided on the evidence of record as a matter of law.

I. BACKGROUND AND STANDING

Petitioner filed a Petition for Cancellation seeking to cancel the registration for Respondent's BODIPEDIC & Reclining Figure Mark, Registration No. 3,916,902, issued on February 8, 2011, for use in connection with mattresses, pillows, and mattress toppers in International Class 20. Petitioner relies on a priority of rights and a likelihood of confusion between the BODIPEDIC & Reclining Figure Mark and Petitioner's TEMPUR-PEDIC & Reclining Figure Mark under 15 U.S.C. § 1125(d), and brings its petition within five years of the date of the challenged registration pursuant to TBMP § 307.02(a).

Petitioner as owner of the TEMPUR-PEDIC & Reclining Figure Mark has standing to challenge the registration as it has a real interest in the proceeding and a reasonable basis for its

belief that it would be damaged by the continued registration of Respondent's mark. *See Richie v. Simpson*, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999); TBMP § 309.03(b).

Petitioner DanFoam APS is owner and registrant of record of the TEMPUR-PEDIC & Reclining Figure Mark, U.S. Registration No. 3,900,919, which it uses in the United States through its related company and licensee Tempur-Pedic Management, Inc. Petitioner maintains quality control over goods bearing the TEMPUR-PEDIC & Reclining Figure Design Mark manufactured and distributed in the U.S.¹

Discovery opened on September 14, 2011 and closed on June 10, 2012. Both parties have served and responded to written discovery requests and conducted discovery depositions. Petitioner's 30-day trial period will open on August 8, 2012. Thus, this matter is ripe for the determination of Petitioner's dispositive motion.

II. ARGUMENT

A motion for summary judgment allows the Board to dispose of cases in which the evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. TBMP § 528.01; Fed.R.Civ. P. 56(c). In this case, Petitioner is entitled to judgment as a matter of law based on the facts in evidence relevant to a determination of likely confusion under *In re E. I. du Pont de Nemours & Co.*, 177 USPQ 563 (CCPA 1973); *see also In re Majestic Distilling Co., Inc.*, 65 USPQ2d 1201 (Fed. Cir. 2003).

Petitioner has uncontested prior rights in its mark and has shown that continued registration of Respondent's mark that is the subject of the challenged registration is likely to cause confusion among the relevant consuming public.

¹ ****CONFIDENTIAL MATERIAL FILED UNDER SEAL****

Priority of Rights

Petitioner is owner of a federal registration for the TEMPUR-PEDIC & Reclining Figure Design Mark, U.S. Registration No. 3,900,919. This valid registration constitutes *prima facie* evidence of the information reflected in the registration, including a first use date of May 2007 in connection with, *inter alia*, mattresses, pillows, and mattress toppers in International Class 20 (“Petitioner’s Goods”). 15 U.S.C. § 1115 (A federal registration “shall be prima facie evidence” of the validity of the registered mark, of its registration, of the registrant's ownership, and of the registrant's exclusive right to use the mark on the goods or services specified in the registration). In addition, Petitioner has used a predecessor version of the TEMPUR-PEDIC & Reclining Figure Design Mark since the early 1990s. Petitioner’s TEMPUR-PEDIC & Reclining Figure Design Mark of U.S. Registration No. 3,900,919 continues the commercial impression of the original mark and includes the same word and design elements in an updated form.²

Respondent concedes³ that use of its mark began in April 2009, after Petitioner’s date of first use.⁴ Therefore priority is not an issue in this proceeding.

Likelihood of Confusion

In re E.I. DuPont de Nemours & Co., 177 USPQ 563 (CCPA 1973), sets out factors relevant to determining whether a likelihood of confusion exists with respect to marks. However, the determination of likely confusion does not require examination and findings as to

² ****CONFIDENTIAL MATERIAL FILED UNDER SEAL****

³ Respondent has provided verified answers to Petitioner’s First Set of Interrogatories, attached as Exhibit C, and has responded to Petitioner’s First Requests for Admissions, attached as Exhibit D. These responses establish the facts surrounding Respondent’s adoption and use of the BODIPEDIC & Reclining Figure Design mark of Registration No. 3,916,902, and are proper evidence for purposes of a dispositive motion before the Board. TBMP § 528.05(c); Trademark Rule 2.127(e)(2).

⁴ ****CONFIDENTIAL MATERIAL FILED UNDER SEAL****

each and every *DuPont* factor. *See Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002), citing *Hoover Co. v. Royal Appliance Mfg. Co.*, 57 USPQ2d 1720, 1721 (Fed. Cir. 2001).

Here, the factors most relevant to the issue of likely confusion are: (1) the strength and fame of Petitioner's mark; (2) the similarities between the goods and the marks of the parties; (3) significant evidence of actual confusion in the marketplace; and (4) the commonality of the channels of trade through which the parties' goods at issue pass.

Petitioner's TEMPUR-PEDIC & Reclining Figure Design Mark is Strong and Famous

Under any standard, the TEMPUR-PEDIC & Reclining Figure Design Mark is famous and well-known. The fame of a senior mark is a dominant factor in establishing that confusion, mistake, or deception is likely. *Kenner Parker Toys*, 22 USPQ2d at 1456. *See also Packard Press, Inc. v. Hewlett-Packard Co.*, 56 USPQ2d 1351 (Fed. Cir. 2000) ("The fifth *DuPont* factor, fame of the prior mark, when present, plays a 'dominant' role in the process of balancing the *DuPont* factors."). This is because famous marks enjoy a wide latitude of legal protection. *Bose*, 63 USPQ2d 1303, 1305, citing *Recot, Inc. v. Becton*, 54 USPQ2d 1894 (Fed. Cir. 2000). *See also Interlego AG v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002) (The mark LEGO for toys was found to be a famous mark entitled to "a very broad scope of protection." A likelihood of confusion was found by the use of applicant's MEGO for toys.).

"Fame" for likelihood of confusion purposes differs from fame for dilution purposes, since dilution fame is an "either/or proposition, whereas likelihood-of-confusion fame varies along a spectrum." *Palm Bay Imports v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 USPQ2d 1689, 1694 (Fed. Cir. 2005). Fame for likelihood of confusion purposes requires a showing that a mark has achieved "extensive public recognition and renown." *Id.* at 1694.

Evidence of a mark's fame may be measured by the volume of sales of and advertising expenditures for the goods traveling under the mark. *See Bose Corp. v. QSC Audio Products Inc.*, 63 USPQ2d 1303, 1305 (Fed. Cir. 2002). Fame may also be shown through extensive unsolicited media attention. *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715 (TTAB 2007); *Starbucks U.S. Brands LLC v. Ruben*, 78 USPQ2d 1741 (TTAB 2006).

Evidence of the fame of Petitioner's TEMPUR-PEDIC & Reclining Figure Mark is overwhelming.

Petitioner's Advertising Measures

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

*****CONFIDENTIAL MATERIAL FILED UNDER SEAL*****

Petitioner's Sales Figures

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

Third-Party Media Attention

Petitioner's Goods have received widespread unsolicited media coverage including in *Consumer Reports*, *The Patriot Ledger*, *The Albany Herald*, *Sacramento Business Journal*, *Furniture Today Magazine*, *Tire Business*, *PR Newswire Association*, and *Corpus Christi Caller-Times*.⁵ A number of these articles include comments on the quality of Petitioner's Goods.

⁵ Articles printed from Lexis Nexis database attached as Exhibit L.

Petitioner's Goods have appeared or have been mentioned on national television shows including The Oprah Winfrey Show, The Montel Williams Show, Late Night with Jimmy Fallon, The Martha Stewart Show, The Biggest Loser, The Rachel Ray Show, and on ABC Nightly News.⁶

Respondent's Recognition of Fame of Petitioner's Mark



*****CONFIDENTIAL MATERIAL FILED UNDER SEAL*****

⁶ Digital Media Captures on electronic storage media, PET0369, filed by hand.

A strong mark “casts a long shadow which competitors must avoid.” *Palm Bay*, 73 USPQd at 1694. The TEMPUR-PEDIC & Reclining Figure Design Mark is entitled to the benefits of fame established by the law and as applied by this Board.

Similarity of the Parties’ Marks and Goods

Petitioner’s TEMPUR-PEDIC & Reclining Figure Design Mark and Respondent’s BODIPEDIC & Reclining Figure Mark are reproduced below.

PETITIONER	REGISTRANT
	
<p>Seating and couching mats in the nature of a pillow or seat liner, pillows, cushions, mattresses, top mattresses, bolsters and chair pads in International Class 20.</p>	<p>Mattress toppers, pillows, mattresses in International Class 20.</p>

The TEMPUR-PEDIC & Reclining Figure Design Mark is comprised of the silhouette of the rear view of a reclining female figure lying across the top of the words TEMPUR-PEDIC. One word of the two-word mark appears in bold font.

The BODIPEDIC & Reclining Design Figure is comprised of the silhouette of a reclining female figure lying across the top of the word BODIPEDIC. One half of the word mark -- namely the formative “PEDIC” -- appears in bold font.

Although marks are compared in terms of similarity of sound, sight, and meaning, similarity as to only one of these three factors may be sufficient to support a likelihood of confusion. *In re White Swan, Ltd.*, 8 USPQ2d 1534 (TTAB 1988); *Interstate Brands Corp.*, 53 USPQ2d 1910 (TTAB 2000)(“Similarity in either form, spelling or sound alone may be sufficient to support a finding of likelihood of confusion.”). Exact similarity between marks is not necessary to prove that confusion is likely.

Conflicting marks consisting of both words and pictorial symbols must be compared in their entireties to determine likely confusion. *Columbia Steel Tank Co. v. Union Tank & Supply*, 125 USPQ 406 (CCPA 1960). Also referred to as the “anti-dissection rule,” the rationale is that the commercial impression of a composite trademark on an ordinary buyer is created not by its component parts, but by the mark as a whole. *Recot*, 54 USPQ2d 1894 (Fed. Cir. 2000). *China Healthways Institute, Inc. v. Wang*, 491 F.3d 1337, 1340, 83 USPQ2d 1123 (Fed. Cir. 2007) (“The marks must be compared in their entirety, at least when the overall commercial impression is reasonably based on the entirety of the marks.”).

Even an examination of the “similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression,” must compare the marks as they would be viewed by the average purchaser. *Palm Bay Imports*, 73 USPQ2d at 1691 quoting *DuPont*, 177 USPQ at 567. This is because a purchaser normally retains a general, rather than a specific impression of trademarks. *Real Estate One, Inc. v. Real Estate 100 Enter. Corp.* 212 USPQ 957, 960 (TTAB 1981)(“[P]urchasers do not memorize marks; they generally retain only general impressions.”).

In this case, the parties’ respective reclining figure designs are very similar in their depiction of a reclining female figure, on her side, positioned across the top of a word mark that

serves as a “bed.” The human figure designs are both presented in stylized contemporary formats with clean but softly feminine lines. Both figure designs are rendered in a loose “sketch” format in that neither figure is completed along its bottom edge. The designs create a very similar commercial impression, particularly as used in connection with identical word portions.

The inclusion of the identical word “PEDIC” as the second portion of each of the marks heightens the visual and auditory similarities between them, both when viewed and when spoken. The bold font used in one half of each of the “two-part” word marks creates a similar visual impression, particularly when taken in conjunction with the distinctive design elements.

A shared term or portion of a mark supports a finding of similarity. *Kangol Ltd. v. Kanagroos U.S.A., Inc.*, 23 USPQ2d 1945 (Fed. Cir. 1992) (finding the marks KANGOL and KANGAROOS both with a kangaroo design, to be confusingly similar for clothing). This is particularly true where the senior mark is strong and entitled to a wide scope of protection. As the Federal Circuit has written: “the Board itself, other courts and this court have been confronted frequently with situations ... in which a competing mark shares a core portion of senior marks, and in which the competing mark was found too similar to the other mark to earn mark status for itself.” *Bose*, 63 USPQ2d at 1311, citing J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, § 23.29.

However, the similarities between the parties’ marks cannot be viewed in isolation. The similarities of the goods and the fame and strength of the parties’ marks must also be considered. Petitioner’s Goods and Registrant’s goods are identical. Both sell mattresses, mattress toppers,

and pillows made from visco-elastic foam, more commonly known as “memory foam.”⁷

Therefore, the parties’ products are identical for purposes of likely confusion analysis.

The degree of similarity necessary to support a likelihood of confusion is always something less than exact identity, and the degree of similarity required to prove likely confusion varies with the competitive differences between the parties’ goods. Less similarity is required to prove a likelihood of confusion where goods are competitive than in the case of dissimilar products. As the Board has recognized, “as the degree of similarity of the goods of the parties increases, ‘the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines.’” *Fossil Inc. v. Fossil Group*, 49 USPQ2d 1451 (TTAB 1998), quoting in part from *Century 21 Real Estate Corp. v. Century Life of America*, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). *See also In re Microsoft Corporation*, 68 USPQ2d 1195 (TTAB 2003).



Given the fame and strength of the TEMPUR-PEDIC & Reclining Figure Design Mark and the identical nature of the parties’ goods, it is clear that these “shared portions” render Respondent’s BODIPEDIC & Reclining Figure Design mark confusingly similar to Petitioner’s TEMPUR-PEDIC & Reclining Figure Design Mark. *See e.g. Hewlett-Packard Co.*, 281 F.3d at 1266 (finding that the similarities of the parties’ marks outweighed the difference “even though Packard Press’s PACKARD TECHNOLOGIES mark does not incorporate every feature of the HEWLETT PACKARD marks.”)

Appearance of the Parties’ Marks in Connection with Goods

****CONFIDENTIAL MATERIAL FILED UNDER SEAL****

⁷ Not all goods identified in a challenged registration are required to be identical to Petitioner’s goods. *See B.V.D. Licensing Corp. v. Rodriguez*, 83 USPQ2d 1500, 1507 (TTAB 2007).

In addition, both parties advertise their visco-elastic foam pillows, mattresses, and mattress toppers under their respective marks using the following claims:

		
Open Cell Structure	Yes	Yes
Made in USA	Yes	Yes
20-Year Warranty	Yes	Yes
NASA Technology	Yes	Yes
Mattress Constructed in "Layers"	Yes	Yes
Use of "hand print" photograph	Yes	Yes

****CONFIDENTIAL MATERIAL FILED UNDER SEAL****

It is perhaps not surprising that the commercial impressions created by the parties' marks are highly similar.

Significant Actual Confusion Evidence Exists

Convincing evidence of actual confusion occurring under actual marketplace conditions is evidence of a likelihood of confusion. Any evidence of actual confusion is strong proof of the fact of a likelihood of confusion. *See Molenaar, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975) (single instance of confusion is at least "illustrative of how and why confusion is likely").

Petitioner has discovered strong evidence of actual confusion among consumers and potential consumers between the parties' respective marks in real marketplace conditions. On numerous occasions, consumers who encountered BODIPEPDIC & Reclining Figure brand mattresses mistakenly believed that the mattresses were TEMPUR-PEDIC & Reclining Figure Design brand mattresses. This confusion occurred at the point of sale on the Overstock.com web site – which serves as the primary sales channel for Registrant's goods.

*****CONFIDENTIAL MATERIAL FILED UNDER SEAL*****

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

On at least one occasion, a consumer assumed that the BODIPEDIC & Reclining Figure Design pillows were in fact a line of mattresses manufactured by Petitioner in making a purchase. Following the purchase, the consumer contacted the company to determine whether Sleep Innovations was the manufacturer of the TEMPUR-PEDIC brand pillows he had received.

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

In other cases, consumers directly inquired whether the BODIPEDIC brand was a TEMPUR-PEDIC product:

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

These documented examples show that consumers have been confused when encountering Respondent's products on the Internet, by believing that these same products emanate from Petitioner, when they do not. Evidence of actual confusion of this type is highly

probative of likely confusion. *See Molenaer, Inc. v. Happy Toys Inc.*, 188 USPQ 469 (TTAB 1975).

Even inquiries regarding product source can serve as evidence of confusion, particularly where accompanied by evidence of “total confusion” on the part of a consumer. *See Prudential Ins. Co. v. Prudential Title Co.*, 189 USPQ 617 (S.D. Tex. 1976); *Kroger Co. v. Superx, Inc.*, 193 USPQ 245 (E.D. Pa. 1976); *Steinway & Sons v. Demars & Friends*, 210 USPQ 954 (C.D. Cal. 1981); *Susan's, Inc. v. Thomas*, 26 USPQ2d 1804 (D. Kan. 1993) (“It is logical to conclude that these enquiries are evidence of some confusion regarding plaintiff's possible affiliation with defendant's business.”). This is because even where confusion is cleared up prior to the moment of purchase, Section 2(d) confusion can be based upon confusion that creates initial customer interest even where no sale is finally completed as a result of the confusion. *HrL Associates Inc. v. Weiss Associates Inc.*, 12 USPQ2d 1819 (TTAB 1989)(Initial interest confusion is actionable under Lanham Act Section 2(d) in PTO *inter partes* proceedings).

This actual confusion evidence weighs strongly in favor of Petitioner's arguments that confusion is likely.

The Parties Share Channels of Trade

Respondent's BODIPEDIC & Reclining Figure Design mark is used on (identical) goods that travel through the same trade channels through which goods sold under the TEMPUR-PEDIC & Reclining Figure Design Mark travel.⁸

*****CONFIDENTIAL MATERIAL FILED UNDER SEAL*****

⁸ Neither Respondent's registration nor Petitioner's registration contains a restriction on trade channels. “Absent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class or purchasers.” *Hewlett-Packard Co.*, 62 USPQ2d at 1005 (Fed. Cir. 2002).

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

Present methods of distribution are not conclusive of no likely confusion because marketing and distribution methods are always subject to change. *See Glamorene Products Corp. v. Procter & Gamble Co.*, 190 USPQ 543 (CCPA 1976)(where applicant does not specify channels of sales, present differences between the parties is not controlling in likelihood of confusion analysis); *Wella Corp. v. California Concept Corp.*, 194 USPQ 419 (CCPA 1977) (reversing Board holding that the parties were “locked into” separate trade channels because there was no proof of impossibility of use of common trade channels in the future).

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

Finally, registrability must be determined “on the basis of the identification of goods set forth in the challenged [registration] regardless of what the record may reveal as to the particular nature of the [registrant’s] goods, the particular trade channels or the class of purchasers to which the sales of the goods are directed.” *Otocom Sys., Inc. v. Houston Computer Serv., Inc.*, 918 F.2d 937, 942 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). As Respondent’s registration contains no limiting language regarding the channels of trade, overlap necessarily exists between the products of Petitioner and products of Respondent.

******CONFIDENTIAL MATERIAL FILED UNDER SEAL******

III. CONCLUSION

Petitioner’s priority of rights is not in dispute.

There is no genuine issue that Petitioner’s Goods and Respondent’s goods are identical and travel in the same trade channels.

The parties’ marks, taken as a whole, are confusingly similar, particularly given the strength and renown of Petitioner’s mark. Evidence of actual confusion between the two marks is real and significant.

Even if doubts remains, it has been well established that all doubts as to the likelihood of confusion, mistake, or deception should be resolved in favor of the senior user. *TBC Corp. v. Holsa*, 44 USPQ2d 1315, 1318 (Fed. Cir. 1997); *Century 21*, 23 USPQ2d 1698, 1701 (Fed. Cir. 1992).

Accordingly, Petitioner respectfully requests that Petitioner's Motion for Summary Judgment be granted and that judgment be entered against the Respondent and that Registration No. 3,916,902, be cancelled.

Respectfully submitted,

s/Amy Sullivan Cahill
Amy Sullivan Cahill
acahill@stites.com
STITES & HARBISON PLLC
400 West Market Street, Suite 1800
Louisville, KY 40202-3352
Telephone: 502-587-3400
Facsimile: 402-587-6392

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on counsel for Registrant, this 2nd day of August, 2012, by sending same via First Class Mail, postage prepaid, to:

Irene Hurtado
Robert W. Smith
MCCARTER & ENGLISH LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

s/Amy Sullivan Cahill

DI65:42033:891678:1:LOUISVILLE

Exhibit A

CONFIDENTIAL

Filed Under Seal

Exhibit B

CONFIDENTIAL

Filed Under Seal

Exhibit C

In the Matter of Registration No. 3,916,902
For the Mark: BODIPEDIC (& Design)
Registration Date: February 8, 2011

Registrant.

REGISTRANT SLEEP
INNOVATIONS, INC.'S RESPONSES
TO PETITIONER DAN FOAM APS'S
INTERROGATORIES

By:

ME1 12813977v.3

GENERAL OBJECTIONS

The following General Objections apply to each of Petitioner's Interrogatories. Each response provided below is made subject to these General Objections as well as subject to any specific objection to any Interrogatory, without waiver of any such objection.

1. SI objects to these Interrogatories to the extent that they are inconsistent with, or impose obligations beyond that required by the Federal Rules of Civil Procedure, the Trademark Rules of Practice and/or the Trademark Trial and Appeal Board Manual of Procedure.
2. SI objects to these Interrogatories to the extent they seek information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. Any inadvertent production will not be deemed a waiver of any privilege with respect to the information or documents produced or their contents.
3. SI objects to these Interrogatories to the extent they are overly broad, unduly burdensome, harassing or seek information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.
4. SI objects to these Interrogatories to the extent they seek information and/or identification of information, documents and things that are not in SI's possession, custody or control.
5. SI objects to these Interrogatories to the extent they seek information cumulative of other Interrogatories contained herein.
6. SI responds to these Interrogatories to the best of SI's present knowledge and only insofar as it may be deemed to have personal knowledge or information that forms the basis of any responses herein. SI reserves the right to supplement these responses as new information

becomes available and in the event that it is so required by the Federal Rules.

7. SI objects to each Interrogatory to the extent it calls for information that is subject to any confidentiality agreement or other agreement or order between SI and a third party that restricts SI's ability to disseminate such information. SI reserves the right to withhold disclosure of such information unless and until SI is authorized by those third parties to disclose such information, as necessary.

8. SI objects to each Interrogatory to the extent it (a) is not reasonably restricted in scope or time; (b) utilizes terms and phrases which are undefined and are subject to varying interpretations as applied in this action; (c) is vague and ambiguous and fails to describe the information requested with reasonable particularity, (d) calls for speculation on behalf of SI as to the information being requested; and/or (e) calls for interpretations of contracts and other documents, the terms of which speak for themselves.

9. SI objects to the extent that any Interrogatory implies the existence of facts or circumstances not of record or that do not exist, and to the extent that any Interrogatory assumes a legal conclusion. By responding, SI does not admit any factual or legal assumptions contained in any Interrogatory.

10. SI objects to any Interrogatory that calls for production of documents that contain only partially responsive information and reserves the right to withhold production of such documents except on a redacted basis.

11. SI reserves all objections to the relevance and form of the Interrogatories, and the admissibility of any responses to the Interrogatories and/or any information and/or document produced in response to any Interrogatory until the time of any evidentiary hearing and/or trial.

Responses herein should not be construed as a waiver of any right to object to the relevance of any request and/or the admissibility of any responses or documents produced in response to any Interrogatory.

12. To the extent that SI objects to an Interrogatory as vague and ambiguous such that SI is required to speculate on the scope of the Interrogatory in the context of this action, SI may nonetheless respond to such Interrogatory, giving it what SI believes to be a reasonable interpretation or construction. SI, however, shall not be deemed bound by any inconsistent interpretation applied by Petitioner. Further, Petitioner's determination or failure to determine that information may or may not be responsive to a specific Interrogatory shall not be deemed in any manner an admission by SI, and SI shall not be deemed bound by any inconsistent interpretation applied by Petitioner. To the extent that SI asserts a different interpretation, SI reserves its rights to further object to the Interrogatory on additional grounds to that interpretation.

13. SI objects to each Interrogatory to the extent it is argumentative, based on unsupported assumptions of fact or law, or otherwise lacks a factual or legal foundation.

14. SI objects to Petitioner's definition of "Registrant's Products" as overly broad, unduly burdensome and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence, as it encompasses all products sold by Registrant and is not limited to products sold by Registrant that bear Registrant's Mark.

15. Each response set forth below is made without waiver of, and is subject to, any applicable objection set forth herein. Specific objections are made without limiting the breadth and general application of these General Objections.

16. The following responses are each expressly subject to these General Objections without waiver of rights thereunder.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS

INTERROGATORY NO.1

State the address of each location at which Registrant maintains a place of business for the promotion, sale, and distribution of Registrant's Products promoted and/or sold under Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory because it is vague as to the phrase "place of business for the promotion, sale and distribution of Registrant's Products."

RESPONSE: Subject to and without waiver of the foregoing objections, Registrant states that it maintains an address at 187 Route 36 Suite 101, West Long Branch, New Jersey 07764.

INTERROGATORY NO.2

Identify (by name and title) each of Registrant's employees responsible for the promotion, sale, and distribution of Registrant's Products promoted and/or sold bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states:

Lisa Thorstenson, Executive Vice President of Channel Marketing

INTERROGATORY NO.3

State the date Registrant selected (a) the word component and (b) the design component of Registrant's Mark for use in connection with Registrant's Products.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory because it is vague as to the term "selected." SI also objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that its predecessor-in-interest filed an application for the mark BODIPEDIC on April 29, 2005, and that mark was first used in February of 2003. SI further states that it filed an application for the mark BODIPEDIC (& Design) on June 24, 2010, and that mark was first used in April of 2008.

INTERROGATORY NO.4

Identify (by name, job title, and relationship to Registrant) the person(s) who first conceived of (a) the word component and (b) the design component of Registrant's Mark for use by Registrant and provide contact information for that/those person(s).

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory because it is vague as to the phrase "conceived of." SI also objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it is not aware of the identity of the individual who first conceived of the word component of the Registrant's Mark, as the word component was first used by Registrant's predecessor-in-interest. SI further states that Spalding Graphic Media, 100 Westmore Dr, Etobicoke, ON M9V5C3, Tel. (416) 749-3555, developed the design component of Registrant's Mark.

INTERROGATORY NO.5

Identify, by common commercial descriptive name, each product offered for sale, advertised, and/or promoted by or on behalf of Registrant bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it sells mattresses, pillows, and mattress toppers in connection with Registrant's Mark.

INTERROGATORY NO.6

For each product identified in Interrogatory No. 5, state the date of first use, and describe the circumstances surrounding such first use.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it first used the Registrant's Mark in connection with the packaging for the products identified in response to Interrogatory No. 5 above and in connection with the sale of those products on the website on April 2, 2008.

INTERROGATORY NO.7

For each product identified in Interrogatory No. 5, state the approximate wholesale and retail price ranges at which the product is sold.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.8

For each product identified in Interrogatory No. 5, state, by calendar quarter, the dollar volume budgeted and expended by Registrant to promote Registrant's Mark in connection therewith.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents to be produced in response to Petitioner's First Request for Production of Documents after entry of an appropriate protective order.

INTERROGATORY NO.9

For each product identified in Interrogatory No. 5, provide, by calendar quarter, the number of units sold bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents to be produced in response to Petitioner's First Request for Production of Documents after entry of an appropriate protective order.

INTERROGATORY NO.10

For each product identified in Interrogatory No. 5, provide, by calendar quarter, the approximate income received to date from sales in connection therewith.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents to be produced in response to Petitioner's First Request for Production of Documents after entry of an appropriate protective order.

INTERROGATORY NO.11

Identify promotional documents and items used by Registrant in connection with the promotion and sale of Registrant's Products bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence. SI also objects to this Interrogatory because it is vague as to the term "items."

RESPONSE: Subject to and without waiver of the foregoing objections, see documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.12

Identify and describe any circumstance in which the design component of Registrant's Mark is used separately from the word component of Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.13

Identify all searches of any type conducted by or on behalf of Registrant in connection with its selection, use, or decision to apply for Federal registration of Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure.

RESPONSE: Subject to and without waiver of the foregoing objections, Registrant is not aware of searches conducted regarding Registrant's Mark.

INTERROGATORY NO.14

Identify each of Registrant's principal competitors in the sale of Registrant's Products in the United States.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that its principal competitors are manufacturers and sellers of pillows, mattresses, and mattress toppers.

INTERROGATORY NO.15

State whether Registrant had knowledge of Petitioner's Mark prior to Registrant's selection, first use, or filing for Federal registration of Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it did not have knowledge of Petitioner's Mark prior to Registrant's selection, first use, or filing for Federal registration of Registrant's Mark.

INTERROGATORY NO.16

If Registrant had prior knowledge of either the word or design component of Petitioner's Mark prior to Registrant's selection, first use, or filing for Federal registration of Registrant's Mark, state whether Registrant considered the issue of, and/or received any opinions concerning, a likelihood of confusion between Registrant's Mark and Petitioner's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI further objects to this Interrogatory to the extent it is vague as to the phrase "considered the issue of." SI further objects to this Interrogatory to the extent it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, see response to Interrogatory No. 15.

INTERROGATORY NO.17

Identify (by title, publisher, issue date, page number, media outlet, Internet URL, and any other relevant designation), those printed and electronic publications, including web sites and broadcast media commercials, in which Registrant has promoted Registrant's Products bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it promotes Registrant's Products on the Internet, including on the websites www.overstock.com and www.amazon.com. Registrant also promoted Registrant's Products through a commercial for the www.overstock.com website, which can be viewed on the www.overstock.com website as well as through www.youtube.com/watch?v=r2Njyflhzumc. Screen shots of that commercial are produced herewith. See also advertisements produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.18

Identify (by name, date and location) all marketing venues (such as trade shows or fairs) where Registrant has promoted Registrant's Products bearing Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it has promoted Registrant's Products bearing Registrant's Mark at the NY Home Textiles Market in March and September of 2011.

INTERROGATORY NO.19

Identify any market research (including surveys, studies, investigations and focus group inquiries), and those persons have the most knowledge of any market research, conducted by or on behalf of Registrant regarding Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence. SI also objects to this Interrogatory as premature to the extent it seeks information or documents regarding the identity of, facts known by or opinions held by experts retained by SI.

RESPONSE: Subject to and without waiver of the foregoing objections, Registrant has not conducted market research regarding Registrant's Mark.

INTERROGATORY NO.20

Identify any agreements (such as assignments, licenses, authorizations, permissions, or consents) entered into by Registrant regarding Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.21

Identify the channels of distribution and the geographical areas of trade within which Registrant's Products have been, or are intended to be, promoted and/or sold.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that the Registrant's Products have been promoted and sold throughout the United States on the Internet, including through the ecommerce websites www.overstock.com and www.amazon.com as well as Costco stores and Big Lots stores.

INTERROGATORY NO.22

Identify the types of customers with whom Registrant does business in connection with Registrant's Mark, and the types of ultimate consumers to whom Registrant offers for sale Registrant's Products in connection with Registrant's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence. SI also objects to this Interrogatory because it is vague as to the phrase "with whom Registrant does business" and the term "types."

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it sells Registrant's Products to online and physical retail stores in retail channels other than specialty sleep shops, which then sell Registrant's Products primarily to individual consumers seeking mattresses, mattress toppers, and pillows.

INTERROGATORY NO.23

Identify each person or agency that has participated in the creation or distribution of advertisements or promotions for Registrant's Products in connection with Registrant's Mark, and the period of time during which each such person or agency has participated.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states Spalding Graphic Media, 100 Westmore Dr, Etobicoke, ON M9V5C3, Tel. (416) 749-3555, and the Zucconi Idea Agency, Inc., 3131 Route 38, Second Floor, Suite 11B, Mount Laurel, NJ 08054.

INTERROGATORY NO.24

Identify those three persons with the most knowledge surrounding Registrant's use of Registrant's Mark in commerce and provide the contact information for each.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it is overbroad, unduly burdensome, and seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states:

Lisa Thorstenson, Executive Vice President of Channel Marketing

Michael Loomis, Executive Vice President of Product Development

INTERROGATORY NO.25

Identify each reported instance of actual confusion, mistake, or deception known to Registrant between Registrant's Products promoted or sold in connection with the Registrant's Mark and the products promoted or sold in connection with Petitioner's Mark.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it is not aware of any instances of actual confusion, mistake, or deception between Registrant's Products promoted and sold in connection with the Registrant's Mark and the products promoted or sold in connection with Petitioner's Mark.

INTERROGATORY NO.26

State the factual bases for Registrant's denials alleged in Paragraph Nos. 6, 7, 8 and 9 of Registrant's Answer to the Petition for Cancellation and identify any evidence that would support those denials.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI also objects to this

Interrogatory because it is premature, as discovery is ongoing.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it did not allege a denial in Paragraph No. 6 of Registrant's Answer. As to Paragraph Nos. 7 – 9, SI states that the Registrant's Mark is distinguishable from the Petitioner's Mark in appearance, sound, meaning and overall commercial impression, and accordingly the Registrant's Mark is not confusingly similar to the Petitioner's Mark. Thus, the Petitioner has not and will not be damaged by Registrant's continued registration of Registrant's Mark. See documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.27

Describe in detail the factual basis of Registrant's contention that the Petition to Cancel fails to state a claim upon which relief may be granted and identify any and all Documents within Registrant's possession or control relating to said contention.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI also objects to this Interrogatory because it is premature, as discovery is ongoing. SI further objects to this Interrogatory because it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that Petitioner has failed to state a claim upon which relief may be granted because Petitioner's Mark is not confusingly similar to Registrant's Mark. See documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.28

Describe in detail the factual basis of Registrant's contention that the Petitioner lacks standing to bring a cause of action for cancellation of Registrant's Mark and identify any and all Documents within Registrant's possession or control relating to said contention.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI also objects to this Interrogatory because it is premature, as discovery is ongoing. SI further objects to this Interrogatory because it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that Petitioner lacks standing to bring a cause of action for cancellation of Registrant's Mark because Petitioner's Mark is not confusingly similar to Registrant's Mark. See documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.29

Describe in detail the factual basis of Registrant's contention that there is no likelihood of confusion, mistake or deception of the public between the Petitioner's Mark and Registrant's Mark and identify any and all Documents within Registrant's possession or control relating to said contention.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI also objects to this Interrogatory because it is premature, as discovery is ongoing. SI further objects to this

Interrogatory because it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that the Registrant's Mark is distinguishable from the Petitioner's Mark in appearance, sound, meaning and overall commercial impression, and accordingly there is no likelihood of confusion, mistake or deception of the public between Petitioner's Mark and Registrant's Mark. See documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.30

Describe in detail the factual basis of Registrant's contention that laches bars Petitioner's claims and Petitioner is estopped from seeking cancellation of Registrant's Mark and identify any and all Documents within Registrant's possession or control relating to said contention.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI also objects to this Interrogatory because it is premature, as discovery is ongoing. SI further objects to this Interrogatory because it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that laches bars Petitioner's claims and Petitioner is estopped from seeking cancellation of the Registrant's Mark because the Registrant's Mark has been in use since 2008 and has been registered since February of 2011. See documents produced in response to Petitioner's First Request for Production of Documents.

INTERROGATORY NO.31

Identify each person who has supplied documents or information for, or who has participated in responding to, these interrogatories and Petitioner's First Request for Production of Documents and Things.

RESPONSE:

Lisa Thorstenson

INTERROGATORY NO.32

Identify all documents and things Registrant will rely upon in defending the Petition for Cancellation of Registrant's BODIPEDIC (& Reclining Figure Design) registration.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI objects to this Interrogatory to the extent that it seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence. SI also objects to this Interrogatory because it is premature, as discovery is ongoing. SI also objects to this Interrogatory as premature to the extent it seeks information or documents regarding the identity of, facts known by or opinions held by experts retained by SI. SI further objects to this Interrogatory because it calls for a legal conclusion.

RESPONSE: Subject to and without waiver of the foregoing objections, see documents produced in response to Petitioner's First Request for Production of Documents and documents to be produced after entry of an appropriate protective order.

INTERROGATORY NO.33

Explain the decision to adopt and file for registration of Registrant's Mark approximately five years after seeking registration of the word portion of Registrant's Mark alone, which application matured to Registration No. 3137309.

OBJECTION: In addition to its General Objections, SI objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege or the work product doctrine or which is otherwise privileged or protected from disclosure. SI further objects to this Interrogatory because it calls for a legal conclusion. In addition, SI objects to this Interrogatory to the extent that it seeks information that is not relevant and that is not reasonably likely or calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of the foregoing objections, SI states that it adopted the Registrant's Mark for use in connection with the promotion and sale of the Registrant's Products, and it filed an application to register that mark to protect the mark and obtain the benefits of federal registration.

VERIFICATION

I, Lisa Thorstenson, Executive Vice President for Channel Marketing of Registrant Sleep Innovations, Inc., am authorized to make this verification on behalf of Registrant, and I hereby verify that I have read the foregoing Responses to Petitioner's First Set of Interrogatories and that the same are true to the best of my knowledge and belief.

I further state that the reason this verification is made by me and not by the party is because Registrant is a corporation; that the sources of my knowledge or the contents of my beliefs are personal knowledge, consultation with employees of Registrant, and documentary evidence within the possession of Registrant.



Lisa Thorstenson

Dated: January 10, 2012